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AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN AGREEMENT BETWEEN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY, PURSUANT TO 42 U.S.C. 433(e)(1)

JULY 8, 1987.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

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To the Congress of the United States:

Pursuant to Section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (P.L. 95–216, 42 U.S.C. 433(e)(1)), I transmit herewith the Supplementary Agreement between the United States of America and the Federal Republic of Germany (FRG) on Social Security, signed at Washington on October 2, 1986. The Supplementary Agreement consists of two separate instruments, one amending the basic social security agreement and the other amending its related administrative agreement.

The U.S.–FRG social security agreement is similar in objective to the social security agreements in force with Belgium, Canada, Italy, Norway, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements, generally known as totalization agreements, provide for limited coordination between the United States and foreign social security systems to overcome the problems of gaps in protection and of dual coverage and taxation for workers who move from one country to the other. The present Supplementary Agreement would amend the original agreement with the Federal Republic of Germany and its related administrative agreement to update and simplify several of their provisions to take account of changes in U.S. and German law and to simplify the method of computing U.S. benefit amounts.

I also transmit for the information of the Congress a comprehensive report prepared by the Department of Health and Human Services, which explains the provisions of the Supplementary Agreement and the effect on Social Security financing as required by the same provision of the Social Security Act.

The Department of State and the Department of Health and Human Services join with me in commending the U.S.–FRG Supplementary Social Security agreement and related documents.

RONALD REAGAN.

THE WHITE HOUSE, *July 8, 1987.*

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

AMENDING THE ADMINISTRATIVE AGREEMENT OF JUNE 21, 1978

FOR THE IMPLEMENTATION OF THE AGREEMENT

BETWEEN THE UNITED STATES OF AMERICA

AND THE FEDERAL REPUBLIC OF GERMANY

ON SOCIAL SECURITY OF JANUARY 7, 1976

The Government of the United States of America

and

the Government of the Federal Republic of Germany,

In application of Article 16, paragraph 1, of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, hereinafter referred to as the "Agreement", as amended by the Supplementary Agreement of this date,

Have agreed to amendments to the Administrative Agreement for the Implementation of the Agreement, signed on June 21, 1978 (hereinafter referred to as the "Administrative Agreement"), as follows:

Article 1

1. Article 4 of the Administrative Agreement shall be amended as follows:

   (a) Paragraph 3, sentence 2, shall be deleted.

   (b) In paragraph 4(a), the words "(or the office designated by it)" shall be added after the words "the Competent Authority".

2. Article 5 of the Administrative Agreement shall be amended as follows:

   (a) Paragraphs 1, 6, and 7 shall be deleted.

   (b) In paragraph 2, the words "or earnings based on such periods of coverage" shall be deleted.

3. Article 6, paragraph 1, of the Administrative Agreement shall be deleted.

4. Article 8, paragraph 2, of the Administrative Agreement shall be revised to read as follows:

   "2. In the application of Article 7 of the Agreement, the German Competent Agency shall notify the United States Competent Agency of the periods of coverage creditable under German laws, together with a list of the months in the periods of coverage.".

5. Article 14 of the Administrative Agreement shall be deleted.

Article 2

This Supplementary Administrative Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months after the date of entry into force of this Supplementary Administrative Agreement.

Article 3

This Supplementary Administrative Agreement shall enter into force on the date of entry into force of the Supplementary Agreement of this date amending the Agreement.

DONE at Washington on Oct. 2, 1986
in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

Lucas R. Hardy

FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY

SUPPLEMENTARY AGREEMENT

AMENDING THE AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA AND

THE FEDERAL REPUBLIC OF GERMANY

ON SOCIAL SECURITY OF JANUARY 7, 1976

The United States of America

and

the Federal Republic of Germany,

Having considered the Agreement between the United States of America and the Federal Republic of Germany on Social Security signed January 7, 1976, hereinafter referred to as the "Agreement",

Having recognized the need to improve the manner of determining rights to benefits under the Agreement and to conform the Agreement to their present social security laws,

Have agreed as follows:

Article 1

1. In Article 6, paragraph 5, of the Agreement, the words "(or the office designated by it)" shall be added after the words "the Competent Authority".

2. Article 8, paragraph 5, of the Agreement shall be revised to read as follows:

> "5. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, one-half of the child's supplement or of the supplement to the orphan's pension shall be payable.".

3. Article 9, paragraph 1, of the Agreement shall be revised to read as follows:

> "1. Where entitlement to a benefit under United States laws is established according to the provisions of Article 7, paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on

(a) the person's average earnings credited exclusively under United States laws, and

(b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.".

4. Article 9, paragraph 3, of the Agreement shall be deleted.

5. In Article 16, paragraph 2(a), of the Agreement, the word "and" in clause (3) of the English language version shall be deleted, the semicolon in clause (4) shall be replaced by a comma, and the following clause (5) shall be added:

"(5) to the extent that the German statutory sickness insurance agencies are involved in administering the Agreement, the Bundesverband der Ortskrankenkassen (Federal Association of Local Sickness Insurance Agencies), Bonn;".

6. Article 18 of the Agreement shall be deleted.

7. In paragraph 2(a) of the Final Protocol to the Agreement, the phrase "sections 226 and 228" shall be replaced by the phrase "sections 226, 226A and 228".

8. In paragraph 4 of the Final Protocol to the Agreement, the following subparagraph (d) shall be added:

"(d) For persons who ordinarily reside in the United States of America, Article 5 of the Agreement shall not apply with respect to benefits under German laws on account of occupational invalidity, total invalidity, or miners' occupational invalidity (verminderte bergmännische Berufsfähigkeit) if the occupational invalidity, total invalidity or miners' occupational invalidity is also due to labor market conditions.".

9. Paragraph 7(a) of the Final Protocol to the Agreement shall be revised to read as follows:

"(a) If, under German laws, provisions on a new assessment of deemed periods of coverage (Zurechnungszeit) and on a pro rata payment of supplements to the orphan's pension enter into force, Article 8, paragraphs 4 and 5, of the Agreement shall not apply to events to which these provisions are applicable.".

10. In paragraph 7 of the Final Protocol to the Agreement, the following subparagraph (e) shall be added:

"(e) In applying German laws concerning the calculation of benefits, in particular provisions concerning the higher assessment of periods of contributions in cases where a prescribed minimum number of years of coverage has been completed, periods of coverage completed under United States laws shall not be taken into account.".

Article 2

1. Notwithstanding Article 4 below, Article 1, paragraphs 3 and 4, of this Supplementary Agreement shall also apply

   a) to any application for benefits filed in accordance with the Agreement, provided that no final decision has been made on such application in accordance with the respective laws by the date on which this Supplementary Agreement enters into force, and

   b) as of the date this Supplementary Agreement enters into force to any recomputation of benefits payable under the Agreement.

2. Article 1, paragraphs 2 and 8, of this Supplementary Agreement shall only apply to insured events occurring after the entry into force of this Supplementary Agreement.

Article 3

This Supplementary Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Supplementary Agreement.

Article 4

This Supplementary Agreement shall enter into force on the first day of the month following the month in which both Governments will have informed each other that the steps necessary under their national statutes to enable the Supplementary Agreement to take effect have been taken.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Supplementary Agreement.

DONE at Washington on Oct. 2, 1986
in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA

Dorcas R. Hardy

FOR THE FEDERAL REPUBLIC
OF GERMANY

REPORT TO CONGRESS TO ACCOMPANY THE SUPPLEMENTARY SOCIAL SECURITY AGREEMENT BETWEEN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY

INTRODUCTION

The supplementary social security agreement between the United States and the Federal Republic of Germany is intended to modify certain provisions of the original U.S.-German social security agreement (TIAS 9542) which was signed on January 7, 1976, and which entered into force on December 1, 1979. The original agreement, like other agreements the United States has concluded under authority contained in section 233 of the Social Security Act, eliminates dual social security coverage and taxation of the same work and helps prevent gaps in social security protection for workers who divide their careers between the two countries. Under the agreement, it is possible for workers to qualify for partial U.S. or German benefits, called totalization benefits, based on combined work credits from both countries. Totalization benefit amounts are prorated based on the duration of a worker's coverage in the paying country.

The supplementary agreement, which was signed by representatives of the United States and German Governments on October 2, 1986, would amend the original agreement to update and simplify several of its provisions. The amendments are necessary, in part, to take account of changes in U.S. and German law that have occurred since the original agreement was implemented. The primary purpose of the supplementary agreement, however, is to authorize the United States to use a simplified method of computing U.S. totalization benefit amounts under the original agreement.

The supplementary agreement, which is now being submitted to Congress for review in accordance with section 233(e) of the Social Security Act, consists of two instruments:

(1) a supplementary principal agreement revising the original U.S.-German agreement signed in 1976; and

(2) a supplementary administrative agreement which revises an administrative agreement signed in 1978 for implementation of the original agreement.

Accompanying this report is a paragraph-by-paragraph explanation of the supplementary agreement and supplementary administrative agreement (Annex A) and the estimate required by section 233(e)(1) on the effect of the supplementary agreement on income and expenditures of the U.S. Social Security program (Annex B). Also included is a marked-up version of the original agreement and administrative agreement texts showing the changes that will be made as a result of the new instruments (Annex C).

MAIN PROVISIONS

As explained below, the supplementary agreement will make several changes in the totalization benefit provisions of the original agreement, but will not affect existing provisions for the elimination of dual coverage.

New U.S. Totalization Computation Method

The Social Security Administration took the initiative in proposing a revision of the original agreement in order to authorize the United States to use a simplified method of computing U.S. totalization benefit amounts. Under the original agreement, if a worker has at least six quarters of coverage under the U.S. Social Security program, the worker's coverage credits from both the United States and Germany can be totalized, i.e., combined, to qualify for a U.S. benefit. If entitlement is established based on totalized credits, the amount of the benefit is determined by combining earnings records from both countries to compute a theoretical U.S. benefit amount. This amount is then prorated to establish a partial benefit based on the ratio of periods of coverage completed in the United States to the total periods completed in both countries. This benefit computation method is the one used in the first three social security agreements concluded by the United States--i.e., those with Italy, the Federal Republic of Germany and Switzerland.

Experience has shown that using foreign earnings information to compute U.S. benefit amounts causes administrative difficulties for both the United States and its agreement partner and results in delays in adjudicating claims for U.S. benefits. Under a new computation method which has been applied under all of the United States' recent agreements, totalization benefit amounts are computed based on periods of coverage and earnings credited exclusively under U.S. law. This computation procedure is described in

detail in regulations promulgated by the Department of Health and Human Services (20 CFR 404.1918 as revised on July 24, 1984). Under this method, the United States computes the theoretical benefit on the basis of a worker's earnings level during the period the worker was actually covered under U.S. Social Security. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime actually completed under the U.S. program. A coverage lifetime is defined in regulations as the number of the worker's benefit computation years, i.e., the years which are used in determining a worker's average earnings under the regular U.S. national computation method.

The supplementary agreement would revise the principal U.S.-German agreement to permit the United States to use the new computation method. Under this method, the theoretical benefit would approximate the benefit amount to which the worker would have been entitled had he worked a full lifetime under the U.S. system at the same relative earnings level as during his actual periods of U.S coverage. The pro rata benefit that would be payable would reflect the part of the worker's coverage lifetime spent under the U.S. system. The new method, which would shorten processing times and expedite the payment of totalization benefits, would result in approximately the same level of benefit payments as the original method.

German Coverage of U.S. Social Security Beneficiaries

Under German law, social security beneficiaries who continue to work are excluded from compulsory coverage; beneficiaries are also prohibited from taking advantage of provisions for payment of voluntary contributions. The original agreement includes a provision that also excludes U.S. Social Security beneficiaries from compulsory and voluntary coverage under the German system. The supplementary agreement removes this provision of the original agreement so that recipients of U.S. Social Security benefits may acquire coverage credits under the German system if they otherwise meet the conditions for coverage under German law.

Provisions Affecting German Benefits

(1) German child's supplements

The supplementary agreement would eliminate a provision of the original agreement under which certain child's supplements provided by German law are reduced to take

account of U.S. benefits that are payable. Under the German social security system, a flat-rate supplement is added to the monthly pension payable to a surviving child. A child's supplement may also be added to the pension of a retired or disabled worker with dependent children (but, as a result of recent German legislation, only if the worker had been eligible for the child's supplement prior to 1984). The original agreement provides that only one-half of these supplements can be paid if the orphan or worker qualifies for the German pension based on combined U.S. and German coverage (totalization), or if the child is eligible for a child's benefit under the U.S. Social Security program. The supplementary agreement would liberalize this rule to provide that the 50-percent reduction would only be applied where entitlement is based on totalization; no reduction would be applied based on receipt of a U.S. benefit.

(2) German disability benefits

Under the supplementary agreement, certain German disability pensions would no longer be payable to workers who reside in the United States and who become disabled after the supplementary agreement takes effect if the determination of disability is based not only on medical factors but unfavorable labor market conditions as well. The German Government requested this provision to take account of German court decisions and changes in German law enacted since the original agreement was negotiated.

Until several years ago, disability determinations under the German social security program were based almost entirely on a worker's medical condition. Court decisions, however, have required the German agencies to take into account labor market conditions in the immediate area of the worker's residence. As a result, some workers whose medical condition alone would not justify a finding of disability may qualify for German benefits if no suitable job can be found for them in their local community under current labor market conditions. Since these benefits can be viewed as compensation for local German labor market conditions, the German Parliament enacted legislation several years ago which precludes the payment of disability pensions to persons who reside outside the Federal Republic if the determination of disability is based on factors other than the worker's medical condition.

The German social security agencies have continued to pay these benefits to U.S. residents, however, because of a provision of the U.S.-German agreement which requires each country to pay retirement, survivors and disability benefits to residents of the other country. Under the supplementary agreement, this requirement of the original agreement would no longer apply with respect to German disability pensions based on labor market conditions; as a result, these pensions would not be payable to U.S. residents who first become eligible after the supplementary agreement enters into force. In effect, the supplementary agreement would reestablish the criteria for exportation of German disability benefits which existed when the original agreement was negotiated. The number of people affected would be small; it is estimated that only about one-half of one percent of all disability beneficiaries under the German social security system now receive benefits due to unfavorable labor market conditions.

(3) Prorating of German child's supplements and deemed periods of coverage

In computing German disability and survivor benefit amounts in cases where a worker becomes disabled or dies before reaching age 55, the worker is deemed to have been covered until age 55. Under the U.S.-German social security agreement, the amount of the benefit attributable to this deemed period of coverage, as well as the supplement payable to orphans (see discussion above), is reduced by half if eligibility is based on totalization of U.S. and German periods of coverage. The German Government is now actively considering legislative amendments which would reduce the amount of benefits attributable to deemed periods of coverage and the orphan's supplements in cases where the worker has had an interruption in his or her German coverage prior to retirement, death or disability onset. A provision in the supplementary agreement would ensure that benefit amounts that may be subject to reduction under future German legislation will not also be subject to a 50-percent reduction under the U.S.-German social security agreement.

(4) German minimum benefits

Special provisions of German law benefit persons who have worked many years at low earnings. Under these provisions, workers who are credited with at least 25 years of coverage under the German system may, if it would be to their advantage, have their benefits computed under a formula that

substitutes 75 percent of the average earnings of all covered workers for each year of low earnings. The original agreement provides that only German periods of coverage and earnings under the German social security system are to be considered when determining a worker's average earnings level for German benefit computation purposes. The German agencies, therefore, have not taken U.S. coverage into account in determining whether the 25-year requirement under the special crediting provisions has been met.

Although U.S. coverage has never been considered for the purpose of meeting the 25-year requirement, a German court decision several years ago involving an agreement between Germany and another country interpreted that agreement to require the German agencies to take foreign coverage into account for this purpose. The German authorities subsequently revised that agreement and are now in the process of revising their other agreements to ensure that only German coverage will be taken into account. The U.S.-German supplementary agreement would make clear that U.S. periods of coverage will not be considered when determining eligibility for higher benefit amounts under the special crediting provisions.

SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976

The United States of America and the Federal Republic of Germany,

Having considered the Agreement between the United States of America and the Federal Republic of Germany on Social Security signed January 7, 1976, hereinafter referred to as the "Agreement",

Having recognized the need to improve the manner of determining rights to benefits under the Agreement and to conform the Agreement to their present social security laws,

Have agreed as follows:

This Supplementary Agreement will amend the U.S.-German Social Security Agreement (30 UST 6099; TIAS 9542) that was signed on January 7, 1976, and which entered into force on December 1, 1979. A related Supplementary Administrative Agreement will amend the Administrative Agreement signed June 21, 1978, for the implementation of the 1976 Agreement. The primary purpose of the supplementary agreements is to authorize the United States to use a simplified method of computing benefit amounts under the original agreement and to adapt the original agreement to changes in U.S. and German social security laws that have occurred since it was negotiated.

SUPPLEMENTARY AGREEMENT

Article 1

1. In Article 6, paragraph 3, of the Agreement, the words "(or the office designated by it)" shall be added after the words "the Competent Authority".

ANNOTATIONS AND COMMENTS

Article 1.1 would amend Article 6.3 of the original U.S.-German Social Security Agreement of 1976 by authorizing the Competent Authorities to delegate to other offices the responsibility for granting exceptions to the coverage provisions of the Agreement. Article 6.3 of the original Agreement authorizes the Competent Authorities of the two countries (the Secretary of Health and Human Services for the United States and the Federal Minister for Labor and Social Affairs for Germany) to agree to such an exception if both the employee and employer (or a self-employed person) request the exception. Exceptions to the Agreement coverage rules are generally granted only where those rules would have clearly anomalous results--for example, where they would result in the worker being left without coverage in either country.

Article 1.1 of the Supplementary Agreement has been included at the request of the German Government. Under Germany's recent social security agreements, the Federal Ministry for Labor and Social Affairs has delegated the responsibility for deciding whether to agree to requests for coverage exceptions to the Federal Association of Local Sickness Insurance Agencies (Bundesverband der Ortskrankenkassen) which is one of the principal agencies responsible for establishing policy regarding coverage and contributions under the German social security system. This change would not affect any procedures on the U.S. side. The Social Security Administration would continue to make determinations on requests for exceptions under the agreement.

SUPPLEMENTARY AGREEMENT

2. Article 8, paragraph 5, of the Agreement shall be revised to read as follows:

> "5. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, one-half of the child's supplement or of the supplement to the orphan's pension shall be payable.".

ANNOTATIONS AND COMMENTS

Article 1.2 deals with supplements payable to or on behalf of children under German law. Under the German social security system, benefits are paid to surviving children up to age 18 (25 if disabled or in school). The benefit consists of two components: an amount equal to one-tenth of the pension that would have been payable to the deceased worker if he had become totally disabled (one-fifth if both parents are deceased) and a flat-rate supplement equal to 152.90 DM per month. (If both parents are deceased, the monthly supplement equals 225.90 DM and, in addition, is subject to automatic annual increases in proportion to the increase in the average earnings of all covered workers.)

A monthly child's supplement equal to 152.90 DM can also be paid to retired or disabled workers with respect to each dependent child who is under 18 years of age (25 if disabled or in school). Under recent legislation, however, the supplement is only paid with respect to a child if the worker was eligible for the supplement with respect to that child prior to 1984.

Under Article 8.5 of the original 1976 agreement, only one-half of the child's supplement or of the supplement to the orphan's benefit can be paid if the worker or orphan qualifies for the German benefit based on combined U.S. and German coverage (totalization) or if the child is eligible for a child's benefit under the U.S. Social Security program. The provision for reducing the German child's and orphan's supplements based on receipt of a U.S. child's benefit is an exception to a principle generally followed throughout the agreement--i.e., that its provisions should not result in the reduction of any benefits for which a person could be eligible absent the agreement. The reduction provision can result in cases where receipt of a small U.S. child's benefit triggers a significantly larger reduction in the German child's supplement. Article 1.2 of the Supplementary Agreement, therefore, provides that the 50-percent reduction will only be applied where entitlement is based on totalization; no reduction will be applied based on receipt of a U.S. benefit.

SUPPLEMENTARY AGREEMENT

3. Article 9, paragraph 1, of the Agreement shall be revised to read as follows:

"1. Where entitlement to a benefit under United States laws is established according to the provisions of Article 7, paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on

(a) the person's average earnings credited exclusively under United States laws, and

(b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.".

ANNOTATIONS AND COMMENTS

Part II of the original 1976 Agreement establishes the basic rules for determining entitlement to and the amount of U.S. and German benefits for persons who have worked in both countries. Under the rules which apply to the United States, if a worker has at least six quarters of coverage under the U.S. Social Security program, the worker's coverage credits from both countries can be totalized, i.e., combined, to qualify for a U.S. benefit. If entitlement is established based on totalized credits, the amount of the benefit is determined by combining earnings records from both countries to compute a theoretical U.S. benefit amount. This amount is then prorated to establish a partial benefit based on the ratio of periods of coverage completed in the United States to the total periods completed in both countries. This computation method is the one which was used in the first three Social Security agreements concluded by the United States--with Italy, West Germany, and Switzerland.

Experience in implementing those three agreements has shown that using foreign earnings information to compute U.S. benefit amounts is cumbersome for both the United States and the other country. A substantial amount of time may be required in some cases to secure foreign earnings records, resulting in long delays in adjudicating U.S. totalization benefit claims.

To avoid the problems created by using foreign earnings data, regulations of the Department of Health and Human Services (20 CFR 404.1918) now provide a new method of computing U.S. totalization benefits within the parameters of section 233 of the Social Security Act. The revised regulations were published as a final rule in the Federal Register on July 24, 1984 (Vol. 49, No. 143, pp. 29771-29777). Under the new method, totalization benefit amounts are computed based on periods of coverage and earnings credited exclusively under U.S. law. All the social security agreements negotiated and submitted to Congress after the agreements with Italy, West Germany and Switzerland

have been drafted so that they authorize the new method. In addition, the original agreement with Italy has been revised to authorize the new method. Under the revised regulations, the original computation method continues to apply under the agreements with West Germany and Switzerland until such time as they are amended to permit use of the new method.

Article 1.3 of the U.S.-German Supplementary Agreement would revise Article 9.1 of the original 1976 Agreement to permit the United States to use the new computation method. The new method will shorten processing time and expedite the payment of totalization benefits. Under this method, the United States will compute the theoretical benefit on the basis of a worker's earnings level during the period he was actually covered under U.S. Social Security. The theoretical benefit will then be prorated to reflect the proportion of a coverage lifetime actually completed under the U.S. program. A coverage lifetime is defined in the revised regulations (20 CFR 404.1918(d)(2)) as the number of the worker's benefit computation years--i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

Under the new method, the theoretical benefit approximates the benefit amount to which the worker would have been entitled had he worked a full lifetime under the U.S. system at the same relative earnings level as during his actual periods of U.S. coverage. The pro rata benefit that is payable reflects the portion of the worker's coverage lifetime spent under the U.S. system. The new method is comparable to the computation methods used by many Western European countries, which compute totalization benefits based solely on earnings under their own social security systems.

SUPPLEMENTARY AGREEMENT

4. Article 9, paragraph 3, of the Agreement shall be deleted.

5. In Article 16, paragraph 2(a), of the Agreement, the word "and" in clause (3) of the English language version shall be deleted, the semicolon in clause (4) shall be replaced by a comma, and the following clause (5) shall be added:

"(5) to the extent that the German statutory sickness insurance agencies are involved in administering the Agreement, the Bundesverband der Ortskrankenkassen (Federal Association of Local Sickness Insurance Agencies), Bonn;".

ANNOTATIONS AND COMMENTS

Article 9.3 of the original 1976 Agreement authorizes the United States to take into account the dollar equivalent of a worker's covered earnings in Germany in computing a totalization benefit. Since the new U.S. totalization computation method is based solely on a worker's covered earnings under the U.S. system, Article 1.4 of this Supplementary Agreement would delete Article 9.3 of the original Agreement.

In addition to their functions under the German sickness insurance program, the German statutory sickness insurance agencies referred to in Article 1.5 are responsible for making coverage determinations and collecting contributions for the German old-age, survivors and disability insurance program. Under Article 4.1 of the 1978 Administrative Agreement for Implementation of the U.S.-German Social Security Agreement, these agencies are also responsible for issuing the certifications of German social security coverage which serve as proof of exemption from U.S. coverage under the agreement. For purposes of coordinating broad policy at the regional and national level, the German sickness insurance agencies, which number over 1,000, are grouped into regional and federal associations. One of the principal associations at the Federal level is the Federal Association of Local Sickness Insurance Agencies located in Bonn-Bad Godesberg.

Article 16.2 of the original 1976 Agreement lists the liaison agencies for both countries. Article 1.5 of this Supplementary Agreement would add the Federal Association of Local Sickness Insurance Agencies to this list as the German liaison agency responsible for communicating with the U.S. Social Security Administration on coverage policy matters.

SUPPLEMENTARY AGREEMENT

6. Article 18 of the Agreement shall be deleted.

7. In paragraph 2(a) of the Final Protocol to the Agreement, the phrase "sections 226 and 228" shall be replaced by the phrase "sections 226, 226A and 228".

ANNOTATIONS AND COMMENTS

Article 18 of the 1976 Agreement was originally intended to authorize the agency of one country to withhold from benefits it pays amounts necessary to recover overpayments made by the agency of the other country. That provision of the Agreement, as well as Article 14 of the Administrative Agreement, limit such withholding, however, to cases where it would be authorized by the social security laws of the country withholding the benefits. Since the Social Security Act (in particular section 207) does not authorize withholding in these cases, Article 18 of the 1976 Agreement has been inoperative as far as U.S. benefits are concerned. As a matter of reciprocity, SSA has not asked any German agency to withhold German benefits to recover U.S. overpayments.

Since the overpayment recovery provisions do not serve any useful purpose, Article 1.6 of this Supplementary Agreement would delete Article 18, and Article 1.5 of the Supplementary Administrative Agreement would delete Article 14 of the Administrative Agreement.

Article 1.7 explicitly designates section 226A as one of the sections of the U.S. Social Security Act which is excluded from the application of the original Agreement in accordance with paragraph 2(a) of the Final Protocol to the Agreement. Section 226A, which deals with Medicare coverage for certain persons suffering from renal disease, is excluded because totalization agreements are restricted in scope under U.S. law to the Federal Old-Age, Survivors and Disability Insurance Program. Section 226A was not mentioned as an exception in the original Agreement because it was added to the Social Security Act after the Agreement was signed.

SUPPLEMENTARY AGREEMENT

8. In paragraph 4 of the Final Protocol to the Agreement, the following subparagraph (d) shall be added:

"(d) For persons who ordinarily reside in the United States of America, Article 5 of the Agreement shall not apply with respect to benefits under German laws on account of occupational invalidity, total invalidity, or miners' occupational invalidity (verminderte bergmannische Berufsfahigkeit) if the occupational invalidity, total invalidity or miners' occupational invalidity is also due to labor market conditions.".

ANNOTATIONS AND COMMENTS

According to German law, occupational invalidity benefits are payable to "an insured person whose earnings capacity is reduced by reason of illness or other infirmity or deterioration of physical or mental health to less than half that of a physically or mentally healthy person with similar training and equivalent knowledge and skill." The law provides that total invalidity benefits are payable to "an insured person who, by reason of illness or infirmity or deterioration of physical or mental health, is incapable for an indefinite period of performing a gainful occupation with any degree of regularity or of earning more than a negligible amount." The miners' occupational invalidity benefit is payable to insured mine workers who by reason of illness or infirmity or deterioration of physical or mental health are no longer able to pursue either their customary occupation in mining or some alternative employment in the mining industry that is performed by persons with similar training, knowledge and skills.

The criteria for determining if a worker is disabled under the German system have changed as a result of German court decisions rendered since the U.S.-German agreement was negotiated. Previously, the determination was based almost entirely on a worker's state of health. Now, the German agencies must take into account local labor market conditions in the worker's area of residence. Thus, a worker who retains most of his work capacity may nevertheless qualify for German disability benefits if the social security agencies cannot establish that a job which the person can perform is actually available in the local area of his or her residence. According to German social security authorities, approximately one-half of one percent of all disability beneficiaries under the German system now receive benefits for which they would not be eligible were it not for unfavorable labor market conditions. Under German legislation enacted in 1981, these so-called "labor market benefits" cannot be paid to persons who reside outside the Federal Republic.

SUPPLEMENTARY AGREEMENT

9. Paragraph 7(a) of the Final Protocol to the Agreement shall be revised to read as follows:

"(a) If, under German laws, provisions on a new assessment of deemed periods of coverage (Zurechnungszeit) and on a pro rata payment of supplements to the orphan's pension enter into force, Article 8, paragraphs 4 and 5, of the Agreement shall not apply to events to which these provisions are applicable.".

ANNOTATIONS AND COMMENTS

The German Government has proposed Article 1.8 of the Supplementary Agreement in order to reestablish the criteria for exportation of German disability benefits which existed when the 1976 agreement was negotiated. Under this provision, Article 5 of the original agreement, which guarantees the payment of benefits from one country to residents of the other country, would no longer apply to German disability benefits that are payable because of a closed labor market.

Under Article 2.2 of the Supplementary Agreement, however, the limitation in German law on the exportation of "labor market" invalidity benefits would only apply to U.S. residents who first become eligible after the entry into force of the Supplementary Agreement.

Article 1.9 would delete the provision now contained in paragraph 7(a) of the Final Protocol and substitute a new, unrelated provision.

Under German law, receipt of a German social security benefit generally excludes a person from further coverage under the German social security system. Paragraph 7(a) of the Final Protocol now provides that receipt of a corresponding U.S. benefit has the same effect under German law. The German authorities have found this provision difficult to administer and requested that it be deleted. Article 1.9 of the Supplementary Agreement accomplishes this purpose, with the result that receipt of a social security benefit from the United States would not exclude a person from further coverage under the German social security system.

Paragraph 7(a) of the Final Protocol--as it would be revised by Article 1.9 of the Supplementary Agreement--is intended to accommodate future amendments to German law regarding so-called "deemed periods of coverage" and supplements to the German orphan's benefit (see the annotation to Article 1.2 of the Supplementary Agreement). Such legislative amendments are now under active consideration by the German Government.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

Under German law, benefit amounts, in general, are directly proportional to the number of a worker's actual years of coverage; however, supplements that are unrelated to a worker's length of coverage may be added to the benefit in certain cases. If a worker dies or becomes disabled before reaching age 55, the amount of survivors or disability benefits may be computed taking into account a deemed period of coverage from the date of death or disability onset to age 55. In the case of orphan's benefits, the benefit amount based on the worker's length of coverage is increased by a flat-rate supplement which currently equals 152.90 DM per month for half orphans and 225.90 DM per month for full orphans.

Under Article 8.4 and 8.5 of the original 1976 Agreement, the amount of disability and survivors benefits attributable to deemed periods of coverage and the amount of the supplement to the orphan's pension are reduced by 50 percent if eligibility is based on totalization of U.S. and German periods of coverage.

Although the amount of the German child's supplement and benefit amounts based on deemed periods of coverage are now independent of a worker's length of German coverage, it is anticipated that future amendments to German law will provide for a reduction in these amounts in cases where a worker has interruptions in his German coverage prior to retirement, death or disability onset. Article 1.9 of this Supplementary Agreement is intended to insure that German benefit amounts which may be subject to the new reductions under German law will not also be subject to a 50-percent reduction under the U.S.-German social security agreement.

SUPPLEMENTARY AGREEMENT

10. In paragraph 7 of the Final Protocol to the Agreement, the following subparagraph (e) shall be added:

"(e) In applying German laws concerning the calculation of benefits, in particular provisions concerning the higher assessment of periods of contributions in cases where a prescribed minimum number of years of coverage has been completed, periods of coverage completed under United States laws shall not be taken into account.".

ANNOTATIONS AND COMMENTS

Article 1.10 is intended to clarify the effect of Article 8.3 of the original 1976 Agreement on provisions of German law concerning the computation of benefit amounts for persons who have worked in Germany at low earnings. It will not affect any existing computation procedures.

Generally, German benefit amounts are directly related to the length of a worker's periods of coverage and the worker's earnings level throughout his or her coverage career. However, the benefits of certain low wage earners are computed under a modified formula that produces higher benefit amounts. Specifically, a person who worked at least 25 years under the German system at low earnings may have his benefits computed under a formula that substitutes 75 percent of the average earnings of all covered workers for each year of low earnings.

Article 8.3 of the original 1976 U.S.-German agreement, like provisions in Germany's other agreements, provides that only German periods of coverage will be taken into account in determining a worker's average earnings level for German benefit purposes. Therefore, U.S. periods of coverage are not considered in determining if the 25-year requirement has been met for the special crediting provisions. According to the German authorities, however, a recent German court decision involving a provision similar to Article 8.3 which was formerly contained in Germany's agreement with Austria required the German agencies to take into account Austrian periods of coverage in determining if the 25-year requirement was met. The German authorities, therefore, revised their agreement with Austria to make clear that only German periods of coverage will be considered for purposes of meeting the 25-year requirement and are now in the process of revising their other agreements in a similar fashion.

SUPPLEMENTARY AGREEMENT

ANNOTATIONS AND COMMENTS

Article 2

1. Notwithstanding Article 4 below, Article 1, paragraphs 3 and 4, of this Supplementary Agreement shall also apply

   a) to any application for benefits filed in accordance with the Agreement, provided that no final decision has been made on such application in accordance with the respective laws by the date on which this Supplementary Agreement enters into force, and

   b) as of the date this Supplementary Agreement enters into force to any recomputation of benefits payable under the Agreement.

Article 2.1(a) stipulates that the new U.S. totalization computation method (see Article 1.3 of this Supplementary Agreement) will apply to any application for benefits under the Agreement that has not been finally adjudicated at the time the Supplementary Agreement takes effect. Paragraph (b) authorizes the United States to recompute benefits payable under the Agreement to persons with U.S. covered earnings credited after entitlement and after the Supplementary Agreement enters into force using the new computation method.

2. Article 1, paragraphs 2 and 8, of this Supplementary Agreement shall only apply to insured events occurring after the entry into force of this Supplementary Agreement.

Article 2.2 provides that Article 1.2 and 1.8 of this Supplementary Agreement will apply only to events material to the determination of benefit rights, i.e., attainment of retirement age, death or disability, which occur after the Supplementary Agreement becomes effective.

Article 3

This Supplementary Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Supplementary Agreement.

Article 3 is a standard clause in agreements entered into by the Federal Republic of Germany. Under commitments which the Federal Republic has with the West Berlin occupying powers, the Federal Republic must obtain approval of the West Berlin occupation authorities before it applies an agreement to West Berlin.

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT AMENDING THE ADMINISTRATIVE AGREEMENT OF JUNE 21, 1978 FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976

The Government of the United States of America and the Government of the Federal Republic of Germany,

In application of Article 16, paragraph 1, of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, hereinafter referred to as the "Agreement", as amended by the Supplementary Agreement of this date,

Have agreed to amendments to the Administrative Agreement for the Implementation of the Agreement, signed on June 21, 1978 (hereinafter referred to as the "Administrative Agreement"), as follows:

SUPPLEMENTARY AGREEMENT

Article 4

This Supplementary Agreement shall enter into force on the first day of the month following the month in which both Governments will have informed each other that the steps necessary under their national statutes to enable the supplementary agreement to take effect have been taken.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Supplementary Agreement.

DONE at Washington on Oct. 2, 1986 in duplicate in the English and German languages, both texts being equally authentic.

For the United States of America:

Otis R. Bowen, M.D.
Dorcas R. Hardy

For the Federal Republic of Germany:

Guenther van Well
Wolfgang Vogt

ANNOTATIONS AND COMMENTS

Article 4 provides that each country will follow its own procedures for approval of the Supplementary Agreement. In Germany, the Supplementary Agreement is subject to Parliamentary review. In the United States, it must be presented to the Congress for a review period during which at least one House has been in session on each of 60 days as required by section 233(e) of the Social Security Act. The Supplementary Agreement will enter into force on the first day of the calendar month following the date each Government has received formal notification of approval from the other Government.

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

ANNOTATIONS AND COMMENTS

Article 1

1. Article 4 of the Administrative Agreement shall be amended as follows:

(a) Paragraph 3, sentence 2, shall be deleted.

A drafting error in the 1977 law that authorized the United States to enter into international social security agreements prevented the United States from imposing social security taxes on certain earnings which would have been covered by the U.S. Social Security system pursuant to the general coverage rules ordinarily included in such agreements. For this reason, it was necessary to include a proviso in Article 4.3 of the U.S.-German Administrative Agreement and in other U.S. social security agreements to make clear that the agreements would not result in U.S. coverage if there were no authority under U.S. laws to collect taxes with respect to that coverage. A provision in the Social Security Amendments of 1983, however, authorizes the U.S. to collect Social Security taxes on earnings covered under a section 233 agreement, thus correcting the deficiency in the original 1977 legislation. With this change in the law, the second sentence of Article 4.3 of the Administrative Agreement has become inoperative, and Article 1.1(a) of the Supplementary Administrative Agreement would, therefore, delete it.

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

(b) In paragraph 4(a), the words "(or the office designated by it)" shall be added after the words "the Competent Authority".

2. Article 5 of the Administrative Agreement shall be amended as follows:

(a) Paragraphs 1, 6, and 7 shall be deleted.

(b) In paragraph 2, the words "or earnings based on such periods of coverage" shall be deleted.

ANNOTATIONS AND COMMENTS

Paragraph (b) of Article 1.1 would amend Article 4.4(a) of the Administrative Agreement to permit each country's Competent Authority to delegate to subordinate agencies the responsibility for concurring with requests for coverage exceptions submitted by the other country. This revision conforms to the change made by Article 1.1 of the Supplementary Agreement and is intended to permit the Federal German Ministry for Labor and Social Affairs to delegate this responsibility to the Federal Association of Local Sickness Insurance Agencies.

Articles 5.1 and 5.6 of the Administrative Agreement are no longer needed because both pertain to procedures that will no longer apply once the new computation method introduced by the Supplementary Agreement is implemented. Article 5.7 of the Administrative Agreement deals with the rounding of U.S. pro rata benefits. Amendments to the Social Security Act which took effect after the original U.S.-German agreement was negotiated have made the procedure in Article 5.7 obsolete.

Article 5.2 of the 1976 Agreement provides, in effect, that SSA will not give credit for German periods of coverage or earnings prior to 1937--the earliest date for which coverage may be credited under the U.S. program. Subparagraph (b) of Article 1.2 would delete the reference to German earnings, since under the new U.S. totalization computation method, such earnings would not be taken into account in any case.

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

ANNOTATIONS AND COMMENTS

3. Article 6, paragraph 1, of the Administrative Agreement shall be deleted.

Article 1.3 would delete Article 6.1 of the Administrative Agreement which deals with the recomputation of U.S. totalization benefits to take account of post-entitlement coverage under the U.S. and German systems. This provision is no longer necessary since under the new U.S. totalization computation method, the United States will not recompute totalization benefits based on additional German coverage and procedures regarding recomputations based on additional U.S. coverage are now included in HHS regulations promulgated since the 1978 Administrative Agreement was negotiated (20 CFR 404.1919).

4. Article 8, paragraph 2, of the Administrative Agreement shall be revised to read as follows:

"2. In the application of Article 7 of the Agreement, the German Competent Agency shall notify the United States Competent Agency of the periods of coverage creditable under German laws, together with a list of the months in the periods of coverage.".

Article 1.4 would delete from Article 8.2 of the Administrative Agreement the requirement that the German agency certify a record of a person's German earnings to the Social Security Administration. Such earnings will no longer be needed to compute a totalization benefit under the new U.S. computation method.

5. Article 14 of the Administrative Agreement shall be deleted.

See the annotation to Article 1.6 of the Supplementary Agreement.

REPORT TO CONGRESS ON THE FINANCIAL EFFECT OF THE UNITED STATES-GERMAN SUPPLEMENTARY SOCIAL SECURITY AGREEMENT

This report presents estimates of additional costs to the U.S. Social Security program resulting from the proposed supplementary agreement with the Federal Republic of Germany. The estimates are based on the assumption that the supplementary agreement will become effective in 1987.

The supplementary agreement makes no change in the provisions of the original U.S.-German social security agreement regarding the elimination of dual coverage and taxation. It will have no effect, therefore, on contribution income to the U.S. Social Security program.

The supplementary agreement does make certain changes in the benefit provisions of the original agreement. The only provision affecting U.S. benefit payment would allow for use of a modified method of computation of U.S. totalization benefits using only U.S. earnings records. The additional annual cost resulting from this change is estimated to be negligible during fiscal years 1987-1991.

SOCIAL SECURITY

Agreement Between the
UNITED STATES OF AMERICA
and the FEDERAL REPUBLIC OF GERMANY

Signed at Washington January 7, 1976

with

Final Protocol

and

Administrative Agreement
Signed at Washington June 21, 1978

FEDERAL REPUBLIC OF GERMANY

Social Security

Agreement signed at Washington January 7, 1976;
Entered into force December 1, 1979.
With final protocol.
And administrative agreement
Signed at Washington June 21, 1978;
Entered into force October 30, 1979;
Effective December 1, 1979.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

The United States of America and the Federal Republic of Germany,

Being Desirous of regulating the relationship between them in the area of social security,

Have agreed as follows:

PART I

General Provisions

Article 1

For the purpose of this Agreement

1. "Territory" means, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards the Federal Republic of Germany, the area in which the Basic Law (Grundgesetz) of the Federal Republic of Germany is in force;

2. "Laws" means the laws and regulations concerning the systems of social security specified in Article 2, paragraph 1;

3. "Competent Authority" means, as regards the United States of America, the Secretary of Health, Education, and Welfare, and as regards the Federal Republic of Germany, the Federal Minister of Labor and Social Affairs (Bundesminister für Arbeit und Sozialordnung);

4. "Agency" ("Träger") means the institution or authority responsible for implementing laws specified in Article 2, paragraph 1;

5. "Competent Agency" means the agency responsible for applying the laws in a specific case;

6. "Employment" means employment or self-employment as defined by the applicable laws;

7. "Period of coverage" ("Versicherungszeit") means a period of payment of contributions or a period of earnings from employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

8. "Benefit" ("Rente") means an old-age, dependent, survivor, or disability insurance benefit provided by the applicable laws;

9. "Cash benefit" ("Geldleistung") means a benefit ("Rente") and any other cash payment provided by the applicable laws; and

10. "Benefit-in-kind" ("Sachleistung") means a rehabilitation benefit-in-kind provided by the applicable laws.

Article 2

1. For the purpose of this Agreement, the applicable laws are:

(a) as regards the Federal Republic of Germany, laws governing

- Wage Earners' Pension Insurance
- Salaried Employees' Pension Insurance
- Miners' Pension Insurance
- Steelworkers' Supplementary Pension Insurance
- Farmers' Old Age Benefits; and

(b) as regards the United States of America, laws governing

- the Federal Old-Age, Survivors and Disability Insurance Program.

2. Laws within the meaning of paragraph 1 of this Article shall not include laws resulting for one Contracting State from other international treaties or supranational legislation, or from laws promulgated for their implementation.

Article 3

Unless otherwise provided, the present Agreement shall apply to

(a) nationals of a Contracting State within the meaning of Article XIV, paragraph 6, of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Federal Republic of Germany of October 29, 1954 and of paragraph 22 of the Protocol thereto,[1] with the proviso that henceforth the term "Certificate of Residence" (Heimatschein) shall be replaced by the term "Certificate of Nationality" (Staatsangehörigkeitsausweis),

(b) refugees within the meaning of Article 1 of the Convention on the Status of Refugees dated July 28, 1951[2] and the Protocol to that Convention dated January 31, 1967,[3]

(c) stateless persons within the meaning of Article 1 of the Convention on the Status of Stateless Persons dated September 28, 1954,[4]

(d) other persons with respect to the rights they derive from a national of either Contracting State, from a refugee or a stateless person within the meaning of this Article, and

(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

Article 4

1. Unless otherwise specified in the present Agreement, the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of either Contracting State shall in the application of the laws of one Contracting State receive equal treatment with the nationals of that Contracting State.

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[1] TIAS 2598; 7 UST 1839, 1909.
[2] 189 UNTS 152.
[3] TIAS 6577; 19 UST 6223.
[4] 360 UNTS 136.

2. Nationals of one Contracting State who ordinarily reside outside of the territories of both Contracting States shall be granted the cash benefits and benefits-in-kind provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who ordinarily reside outside of the territories of both Contracting States.

Article 5

Unless otherwise provided in this Agreement, the laws of one Contracting State which require that entitlement to or payment of cash benefits be dependent on residence in the territory of that Contracting State, shall not be applicable to the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of the other Contracting State.

Article 6

1. Except as otherwise provided in this Article, persons who have employment within the territory of one of the Contracting States shall be subject to the laws on compulsory coverage of only that Contracting State even when the employer is located in the territory of the other Contracting State.

2. The employment of a person in the territory of one Contracting State to which he was sent from the territory of the other Contracting State by his employer in that territory shall continue to be subject to the laws on compulsory coverage of only the other Contracting State, as if he were still employed in the territory of the other Contracting State, even when the employer also has a place of business (Zweigniederlassung) in the territory of the Contracting State of employment.

3. In the case of the employment of a person as an officer or member of a crew of a sea-going vessel which has been granted the right to fly the flag of the Federal Republic of Germany, a German aircraft, an American vessel, an American aircraft, a vessel which has been granted the right to fly the flag of the Federal Republic of Germany and is at the same time an American vessel under United States laws, or of an aircraft which is a German aircraft but which is treated as an American aircraft under United States laws, the following rules shall apply with regard to the laws on compulsory coverage:

(a) If the person is subject to the laws of only one of the Contracting States, he shall remain subject to those laws.

(b) If the person is a national of one of the Contracting States and subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State of which he is a national.

(c) (1) If the person is a national of both Contracting States or is a member of a group specified in Article 3(b), (c) or (e) and is subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State in whose territory he ordinarily resides.

(2) If he does not ordinarily reside in the territory of either Contracting State, he and his employer may apply for an exemption from the laws on compulsory coverage of one of the Contracting States under the procedure provided in paragraph 5 of this Article.

(d) A person who is a national of one Contracting State employed on the vessel or aircraft of the other Contracting State and who is not otherwise subject to the laws on compulsory coverage of either Contracting State shall be subject to the laws on compulsory coverage of the other Contracting State.

4. (a) A national of one of the Contracting States employed by that Contracting State in the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(b) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he does not ordinarily reside, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(c) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he ordinarily resides, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the other Contracting State.

5. Upon application of a person specified in the preceding paragraphs of this Article, except paragraph 3(c)(2), and his employer, or upon application of a self-employed person, the Competent Authority (or the office designated by it) of the Contracting State from whose laws on compulsory coverage the exemption is desired may grant the exemption, if the person and his employer, or the self-employed person, will be subject to the laws on compulsory coverage of the other Contracting State.

PART II

Benefit Insurance System

Article 7

1. Where periods of coverage have been completed under the laws of both Contracting States, the Agency which determines the entitlement to cash benefits and benefits-in-kind under its laws shall take account of periods of coverage which are creditable under the laws of the other Contracting State and which do not coincide with periods of coverage credited under its own laws.

2. This Agreement shall not result in entitlement to a benefit under the laws of a Contracting State unless a minimum period of coverage has been completed by a person under its laws and the completed period of coverage alone does not result in entitlement to benefits. In the application of United States laws, periods of coverage totaling 6 quarters of coverage shall be the required minimum, and, in the application of German laws, periods of coverage totaling 18 months shall be the required minimum.

3. Where a person's periods of coverage are less than the minimum period required by paragraph 2 of this Article under the laws of one Contracting State, those periods of coverage, whether or not consecutive, shall nevertheless be considered by the Agency of the other Contracting State for purposes of the computation of a benefit, as if they were periods of coverage under its own laws, provided that

(a) the person has the minimum period required by paragraph 2 under the laws of the other Contracting State and has entitlement for benefits with or without the

application of paragraph 1 of this Article under the laws of the other Contracting State, or

(b) the person is entitled to benefits under the laws of the other Contracting State with less than the minimum period required by paragraph 2.

Article 8

The following provisions shall apply to the Federal Republic of Germany:

1. The periods of coverage to be considered in accordance with Article 7 shall be taken into account by the insurance system whose Agency is competent for determining a person's benefit if only the German laws were applied. If under this provision the Competent Agency is the Miners' Pension Insurance system, the periods of coverage completed under United States laws shall be taken into account by the Miners' Pension Insurance system if the periods were completed underground in a mine.

2. Periods of coverage completed under United States laws which are to be considered by the Competent Agency for the computation of the benefit payable by it, in accordance with Article 7, paragraph 3, shall only increase the number of creditable insurance years under German laws.

3. In determining the benefit computation base (Rentenbemessungsgrundlage), only periods of coverage considered under German laws shall be taken into account.

4. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, only half

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

ANNOTATIONS AND COMMENTS

Article 2

This Supplementary Administrative Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months after the date of entry into force of this Supplementary Administrative Agreement.

See the annotation to Article 3 of the Supplementary Agreement.

Article 3

This Supplementary Administrative Agreement shall enter into force on the date of entry into force of the Supplementary Agreement of this date amending the Agreement.

This Supplementary Administrative Agreement will enter into force on the same date as the Supplementary Agreement.

DONE at Washington on Oct. 2, 1986 in duplicate in the English and German languages, both texts being equally authentic.

For the Government of the United States of America:	For the Government of the Federal Republic of Germany:
Otis R. Bowen, M.D.	Guenther van Well
Dorcas R. Hardy	Wolfgang Vogt

of the benefit amount which is attributable to deemed periods of coverage (Zurechnungszeit) shall be payable.

~~4. The following rules shall apply where an amount is payable as a supplement to a child; these rules shall also apply if the child's supplement is an integral part of the orphan's pension.~~

~~(a) If a supplement is payable under German laws without the application of Article 7, paragraph 1, but no child's insurance benefit is payable under United States laws, the supplement shall be payable in full.~~

~~(b) If a supplement is payable under German laws with or without the application of Article 7, paragraph 1, and a child's insurance benefit is payable under United States laws, one half of the supplement shall be payable.~~

~~(c) If a supplement is payable under German laws only with the application of Article 7, paragraph 1, and no child's insurance benefit is payable under United States laws, one half of the supplement shall be payable.~~

(NEW) 5. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, one-half of the child's supplement or of the supplement to the orphan's pension shall be payable.

6. For purposes of terminating the right to the compensatory cash benefit for a miner who has been separated from his mining occupation (Knappschaftsausgleichsleistung), a United States mining establishment shall be treated as equivalent to a German mining establishment.

7. In the case of a self-employed craftsman, whose liability status for compulsory coverage is conditional upon payment of a minimum number of contributions, periods of coverage completed under United States laws shall be taken into account to determine whether the craftsman is liable.

Article 9

The following provisions shall apply to the United States of America:

~~2. Where there is eligibility for a benefit under United States laws by applying Article 7, paragraph 1, the Competent Agency shall first compute a theoretical Primary Insurance Amount taking into consideration the periods of coverage completed under the laws of the two Contracting States as if all these periods of coverage had been completed under United States laws. The Competent Agency shall then compute a pro rata Primary Insurance Amount based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Any benefits payable under United States laws on the basis of an earnings record where a pro rata Primary Insurance Amount has been computed will be paid on the basis of that pro rata Primary Insurance Amount.~~

(NEW) 1. Where entitlement to a benefit under United States laws is established according to the provisions of Article 7, paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on

(a) the person's average earnings credited exclusively under United States laws, and

(b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

2. Periods during which a person was determined by a Competent German Agency to be totally disabled under German laws shall, when it is to his advantage, be excluded in determining whether he meets the insured status requirements under United States laws and in computing a Primary Insurance Amount under this Agreement.

~~3. For the purposes of computing a person's theoretical Primary Insurance Amount, the Competent Agency shall take into account, if it is to his advantage, his earnings in any year during periods of coverage completed under German laws, as if they had been completed under United States laws.~~

PART III

Miscellaneous Provisions

Chapter 1

Administrative Cooperation

Article 10

The Competent Authorities, Agencies and associations of the Agencies of the Contracting States shall assist each other in applying this Agreement and in implementing each other's laws as if they were applying their own laws. This assistance shall be free of charge subject to exceptions to be agreed upon by the Contracting States.

Article 11

1. A final decision of a Court or a ruling by a Competent Authority or an Agency of a Contracting State, concerning a matter arising under its laws, which is enforceable under its laws, shall be recognized by the other Contracting State. A Contracting State may refuse recognition if the decision or ruling is contrary to its public policy including its requirements for due process of law.

2. The final decisions and rulings referred to in paragraph 1 shall be enforced under the laws specified in Article 2, paragraph 1, in the territory of the Contracting State in which the decisions or rulings are recognized.

Article 12

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an Agency

of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an Agency of the other Contracting State in accordance with its laws.

2. A document or a copy of a document certified as authentic which is accepted as authentic by the Competent Authority or an Agency of one Contracting State shall be accepted as authentic by the Competent Authority or an Agency of the other Contracting State without further certification.

Article 13

1. The Competent Authorities and the Agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected by a Competent Authority or an Agency because it is in the official language of the other Contracting State.

Article 14

1. An application in writing or other document presented to the Competent Authority or an Agency of a Contracting State shall have the same effect as if it were presented to the Competent Authority or an Agency of the other Contracting State.

2. A person who files an application for cash benefits under the laws of a Contracting State may request that it not be treated as an application for cash benefits under the laws of the other Contracting State, or that it be effective on a different date in the other Contracting State, within the limitations of and in conformity with the laws of the other Contracting State.

Article 15

The consular officers of a Contracting State at diplomatic or consular posts in the territory of the other Contracting State, at the request of a person who is a national of the first Contracting State, may take measures necessary to safeguard and maintain the rights of that person. The person's authorization need not be proven.

Chapter 2

Implementation of the Agreement

Article 16

1. The Competent Authorities of the Contracting States shall, by mutual agreement, establish administrative procedures which are required to implement this Agreement. They shall inform each other of any amendments or additions to their laws.

2. Liaison agencies designated for the implementation of this Agreement are:

(a) In the Federal Republic of Germany -

(1) for the Wage Earners' Pension Insurance system, the Landesversicherungsanstalt Freie und Hansestadt Hamburg (Regional Insurance Institution for Hamburg), Hamburg,

(2) for the Salaried Employees' Pension Insurance system, the Bundesversicherungsanstalt für Angestellte (Federal Insurance Institution for Salaried Employees), Berlin,

(3) for the Miners' Pension Insurance system, the Bundesknappschaft (Federal Miners' Insurance Institution), Bochum, [and]

(4) for the Steelworkers' Supplementary Pension Insurance system, the Landesversicherungsanstalt für das Saarland (Regional Insurance Institution for the Saarland), Saarbrücken[.],

(NEW) (5) to the extent that the German statutory sickness insurance agencies are involved in administering the Agreement, the Bundesverband der Ortskrankenkassen (Federal Association of Local Sickness Insurance Agencies), Bonn;

(b) In the United States of America -

the Social Security Administration.

Article 17

An Agency of a Contracting State may validly pay cash benefits to a person in the territory of the other Contracting State in the currency of its own State or of the other Contracting State. If the cash benefits are paid in the currency of the other Contracting State, the currency conversion shall be at the exchange rate in force on the day the remittance is made.

[~~Article 18~~

~~1. (a) Where a German Agency has made an overpayment of cash benefits to a person, the amount of the overpayment may be withheld for the account of the German Agency by the United States Agency from a cash benefit payable by it on the earnings record of the same person, within the limits of the United States law.~~]

~~[(b) In case of payment of an advance or provisional cash benefit to a person by a German Agency which is more than the amount due, the United States Agency shall withhold for the account of the German Agency an amount equal to the excess amount paid from any cash benefits payable by it on the earnings record of this same person.~~

~~2. (a) Where the United States Agency has made an overpayment of cash benefits on the earnings record (Versicherungskonto) of a person, the amount of the overpayment may be withheld for the account of the United States Agency by a German Agency from a cash benefit payable by it to the same person, within the limits of the German laws.~~

~~(b) In case of payment of an advance or provisional cash benefit on the earnings record (Versicherungskonto) of a person by the United States Agency which is more than the amount due, a German Agency shall withhold for the account of the United States Agency an amount equal to the excess amount paid from any cash benefits payable by it to the same person.]~~

Article 19

1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities it shall, at the request of either Contracting State, be submitted for arbitration in accordance with the following procedures:

(a) An arbitration board shall be established on an ad hoc basis with each Contracting State appointing one member, and both members agreeing on a citizen from a third North Atlantic Treaty Organization member state as chairman who shall be appointed by the governments of the two Contracting States. The members shall be appointed within two months, and the chairman within three months, after one Contracting State has informed the other that it will refer the dispute to an arbitration board.

(b) If the deadlines mentioned in paragraph 2(a) are not met, each Contracting State may, in the absence of other agreements, ask the Secretary General of the North Atlantic Treaty Organization to make the necessary appointments. If the Secretary General is a national of one of the Contracting States or is prevented from acting for another reason, the Deputy Secretary General shall make the appointments. In case the Deputy Secretary General also is a national of one of the two Contracting States or is prevented from acting for another reason, the next Assistant Secretary General following in rank by protocol who is not a national of one of the two Contracting States and who is not prevented from acting for another reason, shall make the appointments.

(c) The arbitration board shall make its decision by majority vote on the basis of the agreements existing between the parties and general international law. Its decisions shall be binding on both Contracting States. Each Contracting State shall bear the cost for its member, as well as for its representation in the proceedings before the arbitration board; the

cost for the chairman as well as other expenses, shall be shared equally between the Contracting States. The arbitration board can make a different decision concerning the allocation of expenses. In all other respects the arbitration board shall establish its own rules of procedure.

Part IV

Transitional and Final Provisions

Article 20

1. This Agreement shall not establish any claim to payment of cash benefits for any period before its entry into force.

2. In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant under the laws occurring before the entry into force of this Agreement.

3. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

4. Cash benefits to which there was entitlement before the entry into force of this Agreement may be recomputed under its provisions. At least the amount of the cash benefits previously payable shall continue to be payable after the recomputation.

Article 21

The attached Final Protocol shall form an integal part of this Agreement.

Article 22

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Agreement.

Article 23

1. This Agreement shall be ratified, and the instruments of ratification shall be exchanged as soon as possible in Bonn.

2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.[1]

Article 24

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of cash benefits acquired under it shall be retained; rights in the process of being acquired shall be recognized in conformity with supplementary agreements.

[1] Dec. 1, 1979.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement and affixed thereto their seals.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

David Mathews [1]

FOR THE FEDERAL REPUBLIC OF GERMANY:

Von Staden [2]

Walter Arendt [3]

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[1] David Mathews.
[2] Von Staden.
[3] Walter Arendt.

FINAL PROTOCOL TO THE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE FEDERAL REPUBLIC OF GERMANY
ON SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between the United States of America and the Federal Republic of Germany, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to Article 1, paragraph 2, of the Agreement: The term "laws" shall include the regulations adopted by the German Agencies (Träger) relating to the systems of social security specified in Article 2, paragraph 1, of the Agreement.

2. With reference to Article 2 of the Agreement:

(a) Regarding Article 2, paragraph 1(b), of the Agreement, with respect to the United States of America, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program are title II of the Social Security Act of 1935, as amended,[1] and regulations promulgated under the authority provided therein, except sections 226 and 228 of that title and regulations pertaining to those sections, and Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 as amended.

(b) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Pension Insurance system or to the Farmers' Old-Age Benefit system of the Federal Republic of Germany.

(c) If under the laws of one of the Contracting States the requirements for the application of another Convention or a supranational regulation are fulfilled in addition to the requirements for the application of this Agreement, the Agency of this Contracting State shall disregard the other Convention or supranational regulation when applying this Agreement.

[1] 49 Stat. 622; 42 U.S.C. § 402.

(d) Article 2, paragraph 2, of the Agreement and paragraph 2(c) of this Protocol shall not apply if the social security laws resulting for the Federal Republic of Germany from international treaties or supranational law or designed to implement such treaties or law contain provisions relating to the apportionment of insurance burdens.

3. With reference to Article 4 of the Agreement:

(a) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.

(b) German laws which guarantee participation of the insured and of the employers in the organs of self-government of the Agencies and of their associations as well as in the adjudication of social security matters shall remain unaffected.

4. With reference to Article 5 of the Agreement:

(a) The German laws regarding cash benefits in respect of periods of coverage accumulated other than under federal law shall remain unaffected.

(b) German laws concerning the granting of medical, occupational and supplementary rehabilitation measures by the Agencies of the Pension Insurance system shall remain unaffected.

(c) Article 5 of the Agreement shall also apply to United States laws under which payment of cash benefits is made dependent on physical presence in the territory of the United States.

(NEW) (d) For persons who ordinarily reside in the United States of America, Article 5 of the Agreement shall not apply with respect to benefits under German laws on account of occupational invalidity, total invalidity, or miners' occupational invalidity (verminderte bergmännische Berufsfähigkeit) if the occupational invalidity, total invalidity or miners' occupational invalidity is also due to labor market conditions.

5. With reference to Article 6 of the Agreement:

(a) Article 6 of the Agreement shall also apply to persons who are treated as employees under the laws specified in Article 2, paragraph 1(a), of the Agreement.

(b) Article 6, paragraph 4, of the Agreement shall apply to an employee of any German public employer.

(c) With respect to the United States of America, the term "employed by that Contracting State" in Article 6, paragraph 4(a), of the Agreement shall mean employed by the Federal Government or one of its instrumentalities, and the term "employee of the first Contracting State" in Article 6, paragraph 4, (b) and (c), of the Agreement shall mean an employee of the Federal Government or one of its instrumentalities.

(d) Article 6, paragraph 5, of the Agreement shall not apply to exemptions from United States laws of United States nationals who ordinarily reside in the territory of the United States of America.

6. With reference to Article 7 of the Agreement:

(a) Periods of coverage completed under United States laws shall not be taken into account for the grant of increments (Leistungszuschlag) provided under German laws governing the Miners' Pension Insurance system.

(b) Under German pension insurance, Article 7, paragraph 1, of the Agreement shall apply mutatis mutandis to cash benefits and benefits-in-kind which may be granted at the discretion of the Agency.

(c) Notwithstanding Article 7, paragraph 3, of the Agreement, the United States Agency shall not be required to take account of periods of coverage completed under German laws in the case of any person who is entitled to transitional benefits on the basis of Section 227 of the United States Social Security Act.

7. With reference to Article 8 of the Agreement:

~~[(a) Where under German law the receipt of a benefit entails exemption from compulsory insurance and preclusion from voluntary insurance, receipt of a corresponding benefit under the laws of the United States shall have the same effect.]~~

(NEW) (a) If, under German laws, provisions on a new assessment of deemed periods of coverage (Zurechnungszeit) and on a pro rata payment of supplements to the orphan's pension enter into force, Article 8, paragraphs 4 and 5, of the Agreement shall not apply to events to which these provisions are applicable.

(b) United States nationals who ordinarily reside outside the territory of the Federal Republic of Germany shall be eligible for voluntary insurance in the German pension insurance system if they have validly paid contributions for at least 60 months to this system or were eligible for voluntary insurance on the basis of transitional laws in force before October 19, 1972. This rule shall also apply to the persons specified in Article 3(b) and (c) of the Agreement who ordinarily reside in the territory of the United States of America.

(c) Upon application United States nationals may pay voluntary contributions to the German pension insurance system retroactively, if eligibility for continued voluntary insurance was abolished by the laws governing voluntary insurance which entered into force on October 19, 1972 because they were either ordinarily residing or domiciled outside the territory of the Federal Republic of Germany. Retroactive voluntary contributions may be made for periods from October 19, 1972 to the day of the entry into force of the Agreement provided that these periods are not already covered by contributions paid to the German pension insurance system. Events relevant to eligibility for a benefit (Eintritt des Versicherungsfalles) which arise within one year after the entry into force of the Agreement shall not preclude

payment of retroactive voluntary contributions. An application can be validly made only during the five-years' period following the date of entry into force of this Agreement. The Competent Agency may accept payments by installments for a period of up to three years.

(d) United States nationals to whom contributions were refunded between October 19, 1972 and the date of entry into force of this Agreement, may repay such contributions upon application. Such repayment may only be made in the full amount of the contributions refunded; it shall have the effect of cancelling any entry of refund of contributions in the insurance record. Paragraph 7(c), the last three sentences shall apply accordingly.

(NEW) (e) In applying German laws concerning the calculation of benefits, in particular provisions concerning the higher assessment of periods of contributions in cases where a prescribed minimum number of years of coverage has been completed, periods of coverage completed under United States laws shall not be taken into account.

8. In the implementation of the Agreement, German laws to the extent that they contain more favorable provisions for persons who have suffered damages because of their political attitude or because of their race, religion or ideology, shall remain unaffected.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

David Mathews

FOR THE FEDERAL REPUBLIC OF GERMANY:

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976

The Government of the United States of America and the Government of the Federal Republic of Germany,

In application of Article 16.1 of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, hereinafter referred to as the "Agreement",

Have agreed as follows:

ARTICLE 1

For the purposes of the application of this Administrative Agreement, terms used in the Administrative Agreement shall have the meaning they have in the Agreement.

ARTICLE 2

The liaison agencies established under Article 16.2 of the Agreement and the Competent Agencies referred to in the second sentence of Article 3 of this Administrative Agreement with the participation of the Competent Authorities shall agree jointly upon uniform administrative measures, procedures, and forms for the implementation of the Agreement. The provisions of Article 16.1 of the Agreement shall not be affected.

ARTICLE 3

Where German laws do not already make provision to this effect, the liaison agency designated for the Wage Earners' Pension Insurance System shall be responsible within the scope of that system for the determination and award of cash benefits, with the exception of medical, occupational, and supplementary rehabilitation benefits, provided that:

(a) periods of coverage have been completed or are creditable under German and United States laws; or

(b) the person eligible ordinarily resides in the territory of the United States of America; or

(c) the person eligible is a United States national ordinarily residing outside the territories of both Contracting States.

The jurisdiction of the German special institutions ("Sonderanstalten") shall not be affected.

ARTICLE 4

1. The Agency of the Contracting State to whose laws on compulsory coverage a person will remain subject in accordance with Article 6 of the Agreement shall issue to the person or his employer a certificate to that effect when requested to do so by the person or his employer.

(a) In the Federal Republic of Germany that certificate shall be issued by the sickness insurance agency to which pension insurance contributions are paid.

(b) In the United States of America the certificate shall be issued by the Social Security Administration.

2. In order to prove that a person is exempt from the laws on compulsory coverage of one Contracting State, it shall be necessary for the person or his employer to present the certificate referred to in paragraph 1 confirming that the person is subject to the laws on compulsory coverage of the other Contracting State.

3. Article 6.2 of the Agreement shall apply to a person if he is transferred from the territory of one Contracting State to the territory of the other Contracting State within the context of a preexisting employment relationship, and the transfer is not expected to be permanent as evidenced by a contract or a written notice from the employer. ~~In cases where the United States laws on compulsory coverage apply in accordance with Article 6.2 of the Agreement, but there is no provision under United States laws for contributions with respect to such coverage, Article 6.1 of the Agreement shall apply.~~

4. (a) In making a determination concerning an exemption from the laws on compulsory coverage of one Contracting State pursuant to Article 6.3(c)(2) or Article 6.5 of the Agreement, the nature and circumstances of the employment shall be taken into consideration. Before making the determination, the Competent Authority (or the office designated by it) of the other Contracting State shall be given an opportunity to express an opinion; the opinion shall in particular address the issue of whether the person concerned and his employer will be made subject to the laws on compulsory coverage of the other Contracting State.

(b) With regard to the Federal Republic of Germany, if the person is not employed in its territory he shall be deemed to be employed at the place of his last previous employment. If the person was not employed previously in that territory, he shall be deemed to be employed at the place where the German Competent Authority has its seat.

(c) Subparagraphs (a) and (b) shall also apply to self-employed persons.

ARTICLE 5

~~[1. The crediting of coverage in any year by the United States Agency under Article 8.1 of the Agreement for periods of coverage creditable under German laws shall be subject to the maximum creditable coverage limitation under United States laws for such year.]~~

2. In applying the Agreement, the United States Agency shall take account of German periods of coverage occurring before 1937 ~~or earnings based on such periods of coverage~~ in accordance with United States laws.

3. (a) In determining eligibility for cash benefits under Article 7.1 of the Agreement, the United States Agency shall credit one quarter of coverage for every three months of coverage certified as creditable by the German Competent Agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(b) In determining eligibility for cash benefits and benefits-in-kind under Article 7.1 of the Agreement, the German Competent Agency shall credit three months of coverage for each quarter of coverage certified as creditable by the United States Agency to the extent that the months in any such quarter of coverage do not coincide with periods of coverage already credited as periods of coverage under German laws.

4. Regarding Article 7.3 of the Agreement, the United States Agency shall consider German periods of coverage which are less than the minimum required by Article 7.2 of the Agreement only if the person is not eligible for a benefit under United States laws without considering such periods of coverage.

5. Article 9.2 of the Agreement shall only apply in cases where eligibility for a benefit under United States laws exists by applying Article 7.1 of the Agreement.

4. Periods of coverage after the computation closing date provided in United States law shall not be considered in determining the scale referred to in Article 8 1 of the Agreement.

5. In cases where the theoretical primary insurance amount is determined by reference to the table of benefits contained in section 215(a) of the United States Social Security Act or deemed to be contained in such section, a pro rata primary insurance amount which is not equal to one contained in column IV of that table may be rounded to the nearest primary insurance amount appearing in such column or, if the pro rata primary insurance amount is less than the minimum primary insurance amount in such column, to a primary insurance amount as set forth in a column of amounts below the minimum primary insurance amount down to the amount of $1.00 in increments to be determined by the United States Competent Authority.

ARTICLE 6

1. Benefits awarded by the United States Competent Agency under the provisions of Part II of the Agreement shall be recomputed on its own motion to take into account additional periods of coverage completed under the laws of the United States of America. Benefits awarded by the United States Competent Agency under the provisions of Part II of the Agreement shall be recomputed upon application to take into account additional periods of coverage credited under German laws. Such a recomputation shall be made in the same manner as an automatic recomputation in accordance with the laws of the United States of America. The United States Competent Agency shall recompute benefits based on an earnings record of:

~~[(a) the additional coverage increases the theoretical primary insurance amount on which the current benefit is based, and~~

~~(b) the total amount of the benefits payable by the United States Competent Agency based on the earnings record after the recomputation is more than the total payable without the recomputation.~~

~~Such recomputation shall not be processed or increase benefit amounts until after the close of the calendar year in which the additional periods of coverage are completed.]~~

2. When an individual is already entitled to a benefit from the United States Competent Agency under Part II of the Agreement and subsequently meets the requirements for receipt of a higher benefit amount from the United States Competent Agency without recourse to Part II of the Agreement, the higher benefit amount shall become payable from the date that the requirements are met.

ARTICLE 7

1. An application for cash benefits under the laws of one Contracting State shall also be treated as an application for cash benefits under the laws of the other Contracting State if the application indicates that periods of coverage under the laws of the other Contracting State are also alleged. Article 14.2 of the Agreement shall remain unaffected.

2. In the application of Article 15 of the Agreement, additional requirements under national statutes for the protection of privacy and confidentiality of personal data shall remain unaffected.

ARTICLE 8

1. In the application of Article 14 of the Agreement, applications, appeals, statements, and documents necessary to establish eligibility shall be forwarded without delay by the Competent Agency of a Contracting State to which they have been presented to the liaison agency of the other Contracting State.

2. In the application of Article 8 of the Agreement the following shall apply:

(a) The German Competent Agency shall notify the United States Competent Agency upon its request of the amount of the person's covered earnings in any year during which periods of coverage were completed under German law, together with a list of the months in the periods of coverage for which contributions were made. The amounts of earnings in a year to be reported by the German Competent Agency shall be derived from the contributions paid during periods of coverage in such year.

(b) For subsistence periods (Ersatzzeiten) creditable under German law, the United States Competent Agency shall take into account earnings which, upon request of the United States Competent Agency, have been certified by the German Competent Agency and which have been determined based on the

~~average gross annual earnings for the years in question of all persons who are covered under the Wage Earners' Pension Insurance System and the Salaried Employees' Pension Insurance System.~~

~~(c) Excused periods (Ausfallzeiten) under German laws shall not be considered.~~

(NEW) 2. In the application of Article 7 of the Agreement, the German Competent Agency shall notify the United States Competent Agency of the periods of coverage creditable under German laws, together with a list of the months in the periods of coverage.

3. In accordance with procedures to be agreed upon pursuant to Article 2, the agencies referred to in Article 2 shall furnish each other available information or copies of documents relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2.1 of the Agreement.

4. Each Agency shall be the final judge of the probative value of documentary evidence presented to it from whatever source. Article 12.2 of the Agreement shall not be affected by this provision.

5. The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number and total amount of benefits and commuted lump-sum payments, by type of benefit.

ARTICLE 9

The Agency of a Contracting State shall pay any cash benefits due to beneficiaries in the territory of the other Contracting State without recourse to a liaison agency of the other Contracting State.

ARTICLE 10

1. Where administrative assistance is requested under Article 10 of the Agreement, expenses, other than postage and regular personnel and operating costs of the Competent Authorities, Agencies, and associations of the Agencies providing the assistance, shall be reimbursed.

2. Where the Agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the Agency of the other Contracting State in which the claimant or beneficiary resides at the expense of the Agency which requests the examination.

3. The Agency of either Contracting State shall furnish to the liaison agency of the other Contracting State at its request and without expense any medical information and documentation relevant to the disability of the claimant or beneficiary which may come into its possession.

ARTICLE 11

For the purpose of Article 11.2 of the Agreement, the text of the decision or ruling must contain a certification by a body competent to issue such a certification testifying to its enforceability under the laws of the Contracting State in whose territory the certification was issued.

ARTICLE 12

For the purpose of Article 13.1 of the Agreement, laws governing the recourse to interpreters shall not be affected. Rulings, official notifications, or other documents may be transmitted directly to a person resident in the territory of the other Contracting State by registered letter.

ARTICLE 13

Where an Agency of one Contracting State is required to make payments to an Agency of the other Contracting State, such payments shall be made in the currency of the other Contracting State.

~~[ARTICLE 14~~

~~[The withholding of cash benefits in accordance with Article 18 of the Agreement shall be governed by the laws of the Contracting State whose agency is to withhold the cash benefits.]~~

ARTICLE 15

The use of information furnished under the Agreement by one Contracting State to another with regard to an individual shall be governed by the respective national statutes for the protection of privacy and confidentiality of personal data.

ARTICLE 18

1. (a) Pursuant to the provisions of Article 2, paragraph 51a, subparagraphs 2 and 3 of the German Wage-Earners' Pension Insurance (Reform) Act (ArVNG) and of Article 2, paragraph 49a, subparagraphs 2 and 3 of the German Salaried Employees' Pension Insurance (Reform) Act (AnVNG), all of which entered into force on October 19, 1972, persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive voluntary contributions to the German pension insurance system for the period from January 1, 1956, through December 31, 1973. Such persons shall be deemed to be eligible for voluntary insurance under the German pension insurance system as if they were German nationals.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement. Such an application shall be filed with the German Competent Agency to which the person's last contribution was paid or, if the last contribution was paid to the Miners' Pension Insurance system, with the liaison agency of the Salaried Employees' Pension Insurance system.

(c) The contributions shall be paid directly to the Agency specified in paragraph (b) with which the application was filed.

(d) The contributions may be accepted by the agency concerned in installments over a period of up to three years. Such contributions may be made only up to the German contribution assessment ceiling for monthly earnings of the year 1973. The calculation of the German benefit computation base applicable to the insured persons shall be based on the figures for 1973.

(e) Events relevant to eligibility for a benefit under German laws which arise in the period between October 18, 1972, and the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(f) The application of the provisions of this section shall in all other respects be subject to the German transitional laws which entered into force on October 19, 1972.

2. (a) Pursuant to the provisions of Section 10 and Section 10a of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG), persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive contributions to the German pension insurance system.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement.

(c) In applying the provisions specified in paragraph (a) of this section, periods of coverage under United States laws shall be taken into account to the same extent as periods of coverage under German laws for the required period of coverage of 60 calendar months.

(d) Events relevant to eligibility for a benefit under German laws which arise before the end of the first twelve months after the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(e) If a person specified in paragraph (a) of this section has died before the date specified in the first sentence of Article 18 of this Administrative Agreement, Section 10 subsection 3 and Section 10a subsection 3 of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG) shall apply accordingly.

(f) Paragraph (d) of section (1) of this Article shall also apply to this section.

ARTICLE 17

This Administrative Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months after the date of entry into force of this Administrative Agreement.

ARTICLE 18

This Administrative Agreement shall enter into force on the date on which both Governments will have informed each other that the steps necessary under their national statutes to enable the Administrative Agreement to take effect have been taken.[1] It shall be effective from the date of entry into force of the Agreement.

DONE at Washington on June 21, 1978, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Joseph A. Califano, Jr.[2]

FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY:

B. von Staden[3]

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[1] Oct. 30, 1979.
[2] Joseph A. Califano, Jr.
[3] B. von Staden.